

Item W07-02 Response Form

Title: Collections Cases: Service and Case Management (adopt Cal. Rules of Court, rule 3.740; amend rules 3.110, 3.712, 3.721, 3.1385; and revise form CM-010)

- ☐ **Agree** with proposed changes
- ☐ **Agree** with proposed changes **if modified**
- ☐ **Do not agree** with proposed changes

Comments: _____

Name: _____ Title: _____

Organization: _____

☐ **Commenting on behalf of an organization**

Address: _____

City, State, Zip: _____

Please **write** or **fax** or **respond using the Internet** to:

Address: Ms. Romunda Price,
Judicial Council, 455 Golden Gate Avenue,
San Francisco, CA 94102
Fax: (415) 865-7664 **Attention:** Romunda Price
Internet: www.courtinfo.ca.gov/invitationstocomment

DEADLINE FOR COMMENT: 5:00 p.m., Friday, January 26, 2007
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Your comments may be written on this *Response Form* or directly on the proposal or as a letter. If you are not commenting directly on this sheet please remember to attach it to your comments for identification purposes.

Circulation for comment does not imply endorsement by the Judicial Council or the Rules and Projects Committee.
All comments will become part of the public record of the council's action.

Invitations to Comment W07-02

Title	Collections Cases: Service and Case Management (adopt California Rules of Court, rule 3.740; amend rules 3.110, 3.712, 3.721, 3.1385 ¹ ; and revise form CM-010)
Summary	The proposal would define a “collections case,” require a plaintiff to identify a collections case at the time of filing by checking a box on the <i>Civil Case Cover Sheet</i> (form CM-010), and exempt collections cases from the 60-day time-for-service requirement and case management rules unless a defendant files a responsive pleading. The proposal would also amend rule 3.1385 to provide that if a plaintiff files a notice of settlement, including a conditional settlement, the court must vacate all hearing, case management conference, and trial dates, with limited exceptions. All proposed changes would be effective July 1, 2007.
Source	Civil and Small Claims Advisory Committee
Staff	Susan R. Goins, 415-865-7990, susan.goins@jud.ca.gov
Discussion	A collections case is a simple civil action seeking the recovery of money owed that generally arises from a consumer credit transaction. Currently, the various superior courts handle collections cases differently—in particular, following different case management procedures. The Civil and Small Claims Advisory Committee believes that greater statewide uniformity in the handling of collections cases would benefit litigants and the courts. The advisory committee reviewed all local court rules that address collections cases and used practices and provisions in some of those rules in drafting the proposed statewide rules. Many attorneys practicing in this area represent parties in a large number of cases in numerous jurisdictions. With the adoption of statewide rules applicable to collections cases, attorneys and parties would better know what to expect in their cases. In addition, the proposed rules would allow litigants to avoid unnecessary and unproductive court appearances and thereby reduce their expenses and the courts’ time and resources.

¹ At its June 30, 2006, meeting, the Judicial Council approved the reorganization and renumbering of the California Rules of Court and Standards of Judicial Administration, effective January 1, 2007. The rule amendments are shown throughout this proposal using the new rule numbers that will become effective January 1, 2007. The rules in this proposal were renumbered as follows: rule 3.110 is former rule 201.7; rule 3.712 is former rule 207; rule 3.721 is based on former rule 212(a); and rule 3.1385 is former rule 225.

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Collections cases have the following characteristics, which make them a simpler type of civil case: often no responsive pleadings are filed; if responsive pleadings are filed, often there are limited or no defenses; and the cases are resolved in a relatively short period of time with default judgments or settlements. Because of these characteristics, there is generally little or no need for active case management.

Rule 3.740 would define collections cases and require a plaintiff to check the “Collections” box on the *Civil Case Cover Sheet*. A case meeting the definition would be removed from active case management and exempted from the regular time requirement for service of pleadings, unless a defendant files a responsive pleading. Rules 3.110, 3.712, and 3.721 would be amended to refer to these exemptions.

The proposal would also amend rule 3.1385 to require that if a plaintiff files a notice of settlement, including a conditional settlement, the court must vacate all hearing, case management conference, and trial dates. This amendment would apply to all civil cases.

The *Civil Case Cover Sheet* (form CM-010) would be revised to include a box (in item 6) to indicate whether the case is a collections case under rule 3.740 and to include on the instruction sheet an explanatory statement to parties in collections cases.

Attachments

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Rule 3.740 of the California Rules of Court would be adopted, and rules 3.110, 3.712, 3.721, and 3.1385 would be amended, effective July 1, 2007, to read:²

Rule 3.740. Collections Cases

(a) Definition

“Collections case” means an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking any of the following:

- (1) Tort damages;
- (2) Punitive damages;
- (3) Recovery of real property;
- (4) Recovery of personal property; or
- (5) A prejudgment writ of attachment.

(b) Checking *Civil Case Cover Sheet*

If a case meets the definition in (a), a plaintiff must check the appropriate box on the *Civil Case Cover Sheet* (form CM-010) to indicate that the case is a collections case.

(c) Exemption from general time-for-service requirement and case management rules

A collections case is exempt from:

- (1) The time-for-service requirement of rule 3.110(b); and
- (2) The case management rules that apply to all general civil cases under rules 3.712–3.715 and 3.721–3.730, unless a defendant files a responsive pleading.

² At its June 30, 2006, meeting, the Judicial Council approved the reorganization and renumbering of the California Rules of Court and Standards of Judicial Administration, effective January 1, 2007. The rule amendments are shown throughout this proposal using the new rule numbers that will become effective January 1, 2007. The rules in this proposal were renumbered as follows: rule 3.110 is former rule 201.7; rule 3.712 is former rule 207; rule 3.721 is based on former rule 212(a); and rule 3.1385 is former rule 225.

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(d) Time for service

The complaint in a collections case must be served on all named defendants and proofs of service on those defendants must be filed, or the plaintiff must obtain an order for publication of the summons, within 180 days after the filing of the complaint.

(e) Effect of failure to serve within required time

If proofs of service on all defendants are not filed or the plaintiff has not obtained an order for publication of the summons within 180 days after the filing of the complaint, the court may issue an Order to Show Cause why the action should not be dismissed. If proofs of service on all defendants are filed or an order for publication of the summons is filed at least 10 court days before the Order to Show Cause hearing, the court must continue the hearing to 360 days after the filing of the complaint.

(f) Effect of failure to obtain default judgment within required time

If proofs of service of the complaint are filed or service by publication is made and defendants do not file responsive pleadings, the plaintiff must obtain a default judgment within 360 days after the filing of the complaint. If the plaintiff has not obtained a default judgment by that time, the court must issue an Order to Show Cause why the action should not be dismissed. The Order to Show Cause must be vacated if the plaintiff obtains a default judgment at least 10 court days before the Order to Show Cause hearing.

Rule 3.110. Time for service of complaint, cross-complaint, and response

(a) Application

This rule applies to the service of pleadings in civil cases except for unlawful detainer actions and collections case as under rule 3.740(a), proceedings under the Family Code, and other proceedings for which different service requirements are prescribed by law.

(b)–(i) * * *

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Rule 3.712. Application and exceptions

(a) Application

The rules in this chapter apply to all general civil cases filed in the trial courts except those specified in (b), ~~and (c)~~, and (d).

~~(b)–(c)~~ * * *

(d) Collections cases

The rules in this chapter do not apply to a collections case, as defined in rule 3.740(a), unless a defendant files a responsive pleading.

Rule 3.721. Case management review

In every general civil case except complex cases and cases exempted under rules 3.712(b)–~~(e)~~(d), 3.714(c)–(d), 3.735(b), ~~and~~ 2.573(e), and 3.740(c), the court must review the case no later than 180 days after the filing of the initial complaint.

Rule 3.1385. Duty to notify court and others of settlement of entire case

(a) * * *

(b) Effect of notice of settlement

If the plaintiff or other party seeking affirmative relief files a notice of settlement, including a conditional settlement, the court must vacate all hearing, case management conference, and trial dates.

~~(b)~~ (c) * * *

~~(e)~~ (d) * * *

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): <div style="display: flex; justify-content: space-between;"> <div>TELEPHONE NO.:</div> <div>FAX NO.:</div> </div> ATTORNEY FOR (Name):		FOR COURT USE ONLY <h2 style="margin: 0;">DRAFT</h2> <h3 style="margin: 0;">Not Approved by the Judicial Council</h3>	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:			
CASE NAME:			
CIVIL CASE COVER SHEET <div style="display: flex; justify-content: space-between;"> <div> <input type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) </div> <div> <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less) </div> </div>		Complex Case Designation <div style="display: flex; justify-content: space-around;"> <input type="checkbox"/> Counter <input type="checkbox"/> Joinder </div> Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	
		CASE NUMBER:	
		JUDGE:	
		DEPT:	

Items 1–6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400–3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (<i>not specified above</i>) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (<i>not specified above</i>) (43)
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2. This case ☐ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (*check all that apply*): a. ☐ monetary b. ☐ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action (*specify*):
5. This case ☐ is ☐ is not a class action suit.
6. This case ☐ is ☐ is not a collections case under rule 3.740.
7. If there are any known related cases, file and serve a notice of related case. (*You may use form CM-015.*)
- Date: _____

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on **all** other parties to the action or proceeding.
- Unless this is a complex case, or a collections case, this cover sheet will be used for statistical purposes only.

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INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Collections Cases. A "collections case" is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (*not asbestos or toxic/environmental*) (24)
Medical Malpractice (45)
Medical Malpractice—Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (*not medical or legal*)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract (*not unlawful detainer or wrongful eviction*)
Contract/Warranty Breach—Seller Plaintiff (*not fraud or negligence*)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (*not provisionally complex*) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor
Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10) Claims
Involving Mass Tort (40) Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (*non-domestic relations*)
Sister State Judgment
Administrative Agency Award (*not unpaid taxes*)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (*not specified above*) (42)
Declaratory Relief Only
Injunctive Relief Only (*non-harassment*)
Mechanics Lien
Other Commercial Complaint Case (*non-tort/non-complex*)
Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (*not specified above*) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief from Late Claim
Other Civil Petition